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No. 95-1268

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1996

The STATE of MARYLAND,

Petitioner,

v.

JERRY LEE WILSON,

Respondent.

On Writ of Certiorari to the Court of Special Appeals of the State of Maryland

BRIEF OF *AMICUS CURIAE* NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS, INC. IN SUPPORT OF PETITIONER

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STATEMENT OF INTEREST OF THE NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS

Amicus Curiae the National Association of Police Organizations, Inc. (hereinafter "NAPO") submits this brief in support of Petitioner the State of Maryland's arguments for reversal of the judgement in this case of the Court of Special Appeals of the State of Maryland which affirmed the trial court's suppression of physical evidence seized from Respondent, having found the seizure of the evidence in question to have been violative of the Fourth Amendment to the United States Constitution.

NAPO is a nationwide association of professional, labor and trade organizations representing state, local and federal law enforcement officers. Through its 3,500 state and local affiliates, NAPO actively represents approximately 190,000 sworn, rank-and-file law enforcement officers throughout the country, including, *inter alia*, state troopers, highway patrol officers and traffic enforcement personnel. In 1994, NAPO founded the National Law Enforcement Officers' Rights Center, which advocates the necessity of assuring fundamental due process and workplace safety rights for law enforcement officers in the face of increasing political pressures for the restraint, investigation and prosecution, both civil and criminal, of police.

NAPO has an important interest in this matter, as this case presents issues the resolution of which will define the extent to which law enforcement officers throughout the United States may seek to protect themselves and the motoring public when stopping a motor vehicle which contains more than one

occupant. With the possible exception of responding to a violent domestic dispute, pulling over an occupied motor vehicle constitutes one of the least predictable, and hence most potentially dangerous, of a police officer's "routine" duties. Each such traffic stop presents a situation where an officer, usually alone and often distant from any support, must confront one or more individuals unknown to him or her, who are effectively ensconced within a mobile steel barricade replete with plenty of spaces from which to procure a weapon. The roadway traffic itself also presents a potential threat to the physical safety of the officer and public who are stopped in its midst, and circumstances will dictate whether officers and occupants are safer in their vehicles or afoot in any given encounter. A clear enunciation of the scope and type of authority which a law enforcement officer may properly direct toward the occupants of a lawfully stopped motor vehicle is of tremendous practical importance to the constituent members of NAPO.

NAPO has received the written consent of Petitioner State of Maryland and of Respondent Jerry Lee Wilson to the filing of this brief as required by Rule 37.3 (a) of the Rules of this Court. The original copies of all consents have been filed with the Clerk of the Court as required by that Rule.

SUMMARY OF ARGUMENT

This Court, in evaluating the "reasonableness" of police activities under the Fourth Amendment to the United States Constitution, has held that such reasonableness depends "on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers." *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975). In *Pennsylvania v. Mimms*, 434 U.S. 106 (1977), in the context of the lawful stopping of an occupied motor vehicle by police, concern for officer safety *during traffic stops in general* was recognized as of sufficient constitutional significance as to make reasonable a request by the officer that an occupant regarding whom the officer harbored no particularized suspicion (in that case, the driver) alight from the vehicle.

The case at bar again presents the circumstance of a police officer, having lawfully stopped an occupied motor vehicle, requesting that an occupant regarding whom the officer harbors no particularized suspicion (in this case, a front-seat passenger) alight from the vehicle. Because the constitutionally significant facts of this case are not distinguishable from those in *Mimms*, this Court is urged to affirmatively declare that an occupant of a lawfully stopped motor vehicle may be reasonably requested by a police officer to alight from the vehicle, whether the occupant be the driver or a passenger, the sole or one of several persons in the vehicle.

ARGUMENT

I. SO-CALLED "ROUTINE" TRAFFIC STOPS REPRESENT A SIGNIFICANT RISK OF ASSAULT, INJURY AND DEATH TO THE LAW ENFORCEMENT OFFICER INVOLVED.

As this Court recognized in *Pennsylvania v. Mimms*, 434 U.S. 106 (1977), a State's concern, in the Fourth Amendment context, for the physical safety of its law enforcement officers "is both legitimate and weighty." *Mimms* at 110. The Court further noted that "we have specifically recognized the inordinate risk confronting an officer as he approaches a person seated in an automobile. 'According to one study, approximately 30% of police shootings occurred when a police officer approached a suspect seated in an automobile. [Citations omitted].'" *Id.* And that "Indeed, it appears that a significant percentage of murders of police officers occurs when the officers are making traffic stops. [Citations omitted]" *Id.*

Regrettably, from 1977 (the year in which *Mimms* was decided) through the end of 1995, *four hundred and forty-five* (445) officers have been killed in the line of duty while performing traffic enforcement tasks. National Law Enforcement Officers Memorial, *Police Officers Killed Since 1977 During Traffic Stops, Etc.* 78 (July 11, 1996) (unpublished compilation of data). One hundred ten (110) of these officers were shot to death with firearms by occupants of a motor vehicle they had stopped, and one was bludgeoned to death with his own flashlight. *Id.* Another ninety-eight (98) officers lost their lives when they were feloniously run down

by occupied motor vehicles (as opposed to *accidentally* run down). *Id.*

As this Court noted in *Mimms*, "[t]he hazard of accidental injury from passing traffic to an officer" is also constitutionally cognizable. *Mimms*, at 111. From 1977 through the end of 1995 two hundred and thirty-five (235) officers were struck and killed accidentally while attending to traffic scenes. National Law Enforcement Officers Memorial, *supra*.

Note that these figures represent only the number of officers actually *killed* at traffic scenes, the number of officers assaulted or injured is much higher. In 1994 alone, the most recent year for which United States Department of Justice figures are available, *five thousand seven hundred and sixty-two* (5,762) law enforcement officers were *criminally* assaulted with weapons during traffic pursuits and stops. Federal Bureau of Investigation, *Uniform Crime Reports: Law Enforcement Officers Killed and Assaulted 1994* 71 (1995). The number of officers *accidentally* struck, who lived, would appear to be much higher if the relationship between accidental and intentional killings of police in traffic situations illustrated by the National Law Enforcement Officers Memorial data correlates to the relationship between accidental and intentional injury to officers (but without death) in the traffic stop context.

Numerous studies of assaults upon police, injuries to police, and the killing of police, both before and after *Mimms*, have consistently confirmed that traffic stops represent one of the most (and often the single most) hazardous of circumstances in modern police work.

The FBI, in analyzing the felonious killings of police officers nationwide during the period from 1975 through 1985, concluded that one hundred twenty-nine (129) officers, or 12.5% of all officers feloniously killed during that time frame, were killed during traffic stops. Federal Bureau of Investigation, *Uniform Crime Reports: Law Enforcement Officers Killed and Assaulted 1975-85* (1986). Only attempted arrests for robbery resulted in more officers being killed. *Id.* When the FBI studied killings of police officers nationwide in a slightly different time frame, 1980 through 1989, traffic stops appeared to be even more lethal for police, accounting for 14% of all police killings. Federal Bureau of Investigation, *Uniform Crime Reports Supplement: Law Enforcement Officers Killed and Assaulted 1989* 18 (1989). The FBI found that this trend continued through 1990 as well. Federal Bureau of Investigation, *Uniform Crime Reports Supplement: Law Enforcement Officers Killed and Assaulted 1990* 17 (1991) (13% of all officers killed slain at traffic stops or pursuits).

A similar study evaluating the felonious killing of police officers nationwide during the years 1978 through 1980 found that fifty-five (55) officers, or 19.2% of all officers feloniously killed during those years, lost their lives in traffic stops. D. Konstantin, *Homicides of American Law Enforcement Officers, 1978 - 1980*, 1 Justice Quarterly 1, 29-37 (March, 1984). Konstantin's analysis found traffic stops to be the single circumstance most likely to lead to the death of an officer.

Assaults upon police officers which do not result in the death of an officer exhibit a similar pattern of danger concerning traffic stops. A study of assaults committed against

Detroit police officers during the period July 1, 1973 through June 30, 1974 concluded that 19% of all assaults on police occur in traffic stop circumstances. This was the single greatest identified risk factor in assaults upon Detroit officers. J. Bannon, *Assaults Upon Police Officers: A Sociological Study of the Definition of the Situation* (1976) (unpublished Ph.D. dissertation number AAD76-26108, available through University Microfilms, Ann Arbor, Michigan). Similarly, an analysis of assaults upon police in thirty-seven cities in Oklahoma, New Mexico, Arkansas, Louisiana and Texas during 1973 found that two hundred twenty-seven (227) instances of assault, or 12% of all assaults on police reported, arose in traffic stops. S. Chapman, C. Swanson & C. Meyer, *Descriptive Profile of the Assault Incident* (1974).

Focusing more particularly on assaultive incidents where officers sustain physical injuries but live, the International Association of Chiefs of Police found that in the ten months from July, 1970 through April, 1971 9.8% of all reported physical injuries to police officers occurred in traffic stop circumstances. International Association of Chiefs of Police, *Annual Law Enforcement Casualty Report* (1971). Traffic stops were found to be second only to general disturbances in terms of risk to police officers. *Id.* In yet another study, this one focusing on the fatal as well as non-fatal shootings of Chicago police officers by civilians during the period from 1974 through 1978, researchers found that traffic stops accounted for 3.7% of all firearm woundings of police officers. This figure was second only to general disturbances and robbery arrests in terms of risk of an officer being shot. W. Geller & K. Karales, *Split-Second Decisions: Shootings of and by Chicago Police* (1981) (portions reprinted in H. W. More,

Jr. (ed.), *Critical Issues in Law Enforcement* (4th rev. ed. 1985)).

Turning our attention to cases in which officers shot other persons in the course of duty, studies have again consistently found that traffic stops constitute a significant threat to the physical safety of police officers. W. Geller & K. Karales's study of Chicago police, cited above, discovered that traffic stops accounted for 7% of all shootings by Chicago police for the period studied (1974 through 1978). Geller & Karales, *supra*. A study of police shootings in seven American cities similarly found that 8% of those shootings occurred in a traffic stop context. C. Milton, J. Halleck, J. Lardner & G. Albrecht, *Police Use of Deadly Force* (1977) (portions reprinted in H. W. More, Jr. (ed.), *supra*). A 1978 study of New York City police officers found that 12% of shootings of citizens by police occurred in traffic stop situations. J. Fyfe, *Shots Fired: A Typological Examination of New York City Police Firearms Discharges, 1971-1975* (1978) (unpublished Ph.D. dissertation, School of Criminal Justice, State University of New York-Albany, available through University Microfilms, Ann Arbor, Michigan). Finally, a more recent study of shootings by police throughout New York State revealed that 3% of those shootings arose in a traffic stop context. New York State Commission on Criminal Justice and the Use of Force, *Report to the Governor* (1987) (unpublished report).

Lest one argue that the hazards which traffic stops present to police officers represent solely a *relatively* greater risk compared to other police duties in what is otherwise an increasingly safe profession as measured in absolute terms against other callings, the latest reported statistics from the National Institute for Occupational Safety and Health indicate

that law enforcement officers (in this case, sheriffs) were second only to taxi drivers in terms of being more likely than any other persons in the nation to be physically assaulted and killed on the job. Time, *On the Job Mayhem*, July 22, 1996, at 22. It seems clear, then, that the constitutionally cognizable dangers to the physical safety of police officers as well as motor vehicle occupants in a "routine" traffic stop remain at least as great today as they were when *Mimms* was decided. *Amicus curiae* therefor respectfully urges this Court to again recognize the tremendous public importance attached to an officer's ability to protect him- or herself as well as members of the motoring public during a "routine" traffic stop.

II. LEGITIMATE CONCERN FOR THE PHYSICAL SAFETY OF LAW ENFORCEMENT OFFICERS AND THE PUBLIC MAKES "REASONABLE" A POLICE REQUEST THAT ANY OCCUPANT OF A LAWFULLY STOPPED MOTOR VEHICLE ALIGHT DURING A ROUTINE TRAFFIC STOP.

As this Court recognized in *Mimms*, it is the police officer's encounter with "*a person* seated in an automobile" which constitutes "the inordinate risk" of a routine traffic stop. *Mimms*, at 110 (emphasis supplied). The danger of shootings, this Court emphasized, was great whenever an officer "approached *a suspect* seated in an automobile," regardless of which seat within that automobile the suspect occupied. *Id.* (emphasis supplied). The danger of accidental death or injury to the officer as well as to the occupants of the motor vehicle

is also present to a constitutionally cognizable degree regardless of the number of occupants of the vehicle, or where within the vehicle they sit. It would matter little to an officer who is shot with a firearm procured from inside a vehicle that he or she was shot by someone firing from the front passenger seat instead of the driver's seat. In terms of society's interest in protecting her law enforcement officers, it likewise matters little that the motor vehicle lawfully stopped by a police officer had one occupant or ten when that officer is struck down at the scene.

These "legitimate and weighty" concerns with the safety of police officers as well as the motoring public are what tips the Fourth Amendment balance in favor of an officer being able to request a driver to alight from his or her vehicle. *Mimms*, at 110-11. Because these concerns only increase as the number of vehicle occupants involved increases, *amicus curiae* argues that those same safety concerns make an officer's request to alight directed to any other occupant of a lawfully stopped motor vehicle reasonable under the Fourth Amendment.

One might argue that it was constitutionally permissible in *Mimms* to order the driver from his vehicle only because the driver was already suspected of a traffic offense. Yet while it happened to be the case in *Mimms* that the person against whom the State of Pennsylvania was prosecuting a criminal case had been driving a motor vehicle when he was first stopped by police, that happenstance is not essential to the holding in *Mimms*. *Mimms* involved a challenge to the admission in a criminal case of physical evidence against a person who had been ordered by police to alight from a

lawfully stopped vehicle, just as in the case at bar. And just as in the case at bar, the status of the person as driver or passenger in an admittedly lawfully stopped vehicle, while noted by the parties, is not dispositive of the constitutional issues involved. The Respondent in this case, although he may have occupied a different car seat than the respondent in *Mimms*, sits in the same position vis-a-vis the constitution.

It is impossible, as a practical matter, for police to stop a motor vehicle without at the same time detaining, at least temporarily, all the occupants of that vehicle. Yet it could not seriously be argued that the Fourth Amendment, for that very reason, prohibits police from stopping any vehicle for a traffic offense which contains anyone other than a driver. *All* occupants of a lawfully stopped motor vehicle, then, are equally lawfully inconvenienced, and equally lawfully interrupted in the course of their desired travels. The passengers in a motor vehicle, in addition, would seem to have, if anything, less of a constitutionally recognizable claim to remain in the vehicle than does the driver. They lack even the ephemeral dominion and control over the property that the driver enjoys. The passengers' Fourth Amendment rights to be secure in their own persons from police requests to alight enjoy no greater immunity from being balanced against society's legitimate interests in assuring officer safety than do the driver's.

It should come as no surprise, then, that conducting that balancing yields the same result as the balancing test in *Mimms*. In both cases, the constitutional focus is on what the *governmental* actor is doing, and whether it is reasonable under the circumstances, not on where the occupant was sitting.

Indeed, this Court's constitutional analysis in *Mimms* would properly serve as the template for a holding in the case at bar, substituting only "occupant" for "driver": "Against this important interest [officer and occupant safety] we are asked to weigh the intrusion into the [occupant's] personal liberty occasioned not by the initial stop of the vehicle, which was admittedly justified, but by the order to get out of the car. We think this additional intrusion can only be described as *de minimis*. The [occupant] is being asked to expose to view very little more of his person than is already exposed. The police have already lawfully decided that the [occupant] shall be briefly detained [because the vehicle he was in was lawfully stopped]; the only question is whether he shall spend that period sitting in the [occupant's] seat of his car or standing alongside it. Not only is the insistence of the police on the latter choice not a 'serious intrusion upon the sanctity of the person,' but it hardly rises to the level of a "'petty indignity.'" [citations omitted]. What is at most a mere inconvenience cannot prevail when balanced against legitimate concerns for the officer's safety." *Mimms*, at 111.

Finally, it is to be noted that all the Respondent's arguments in his brief in opposition to Maryland's petition for writ of *certiorari* in this case were equally applicable to the *Mimms* scenario. These dire but tired warnings about police abuse of authority, selective enforcement against minority motorists and the specter of an officer ordering Mother Teresa out of a car and into a blizzard are *constitutionally* irrelevant in the given context of an *admittedly lawful* traffic stop. They exhibit the additional vice of being generally completely untrue. America's police execute an exceedingly difficult calling exceedingly well. They are especially diligent during

traffic stops, when the incentive to do things right is the opportunity to return home alive at the end of the day. Requesting a passenger to alight from a lawfully stopped vehicle is as equally constitutionally reasonable as directing that request to the driver. Calls that the sky will fall if this Court recognizes that police may act reasonably in requesting any given occupant to alight from a lawfully stopped vehicle should be rejected as an improvident basis upon which to expound the Constitution.

In all events, a genuine and well-founded public concern with officer and motorist safety, when balanced against an, at most, *de minimis* intrusion upon the personal liberties of motorists, makes reasonable under the Fourth Amendment a request by police that an occupant alight from a lawfully stopped motor vehicle.

CONCLUSION

For the foregoing reasons, *amicus curiae* the National Association of Police Organizations, Inc. respectfully requests that the Court reverse the judgement in this case of the Court of Special Appeals for the State of Maryland, and remand this cause to the trial court for further proceedings not inconsistent with this Court's opinion.

Respectfully submitted this 1st day of August, 1996,

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